UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,935	09/29/2003	Fred Gehrung Gustavson	YOR920030330US1	8289

48150 7590 12/19/2007

MCGINN INTELLECTUAL PROPERTY LAW GROUP, PLLC
8321 OLD COURTHOUSE ROAD
SUITE 200
VIENNA, VA 22182-3817

EXAMINER	
DO, CHAT C	

ART UNIT	PAPER NUMBER
2193	

MAIL DATE	DELIVERY MODE
12/19/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/671,935	Applicant(s) GUSTAVSON ET AL.	
	Examiner Chat C. Do	Art Unit 2193	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 December 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.
   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-20*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 11/07/2007
13. ☐ Other: _____.

Chat C. Do
Examiner
Art Unit: 2193

Continuation of 11. does NOT place the application in condition for allowance because:
The applicant argues in pages 8-9 for claims rejected under 35 U.S.C. 101 that the claims would increasing processing speed and efficiency as result of selecting an optimal subroutine. Thus, the claims should be statutory. Further, the "machine-readable storage medium" language clearly covers at least some statutory subjet matter, thus the claimed invention is statutory as a whole, not on the interpreted language.
The examiner respectfully submits that the claims do not clearly or inherently disclose the increasing speed and efficiency in term of hardware performance, but rather the increasing speed and efficiency is in term of mathematical operation or computations. Thus claims are directed to non-statutory subject matter. Further, the claims appear to preempt every substantial practical application of the idea embodied by the claim and there is no cited limitation in the claims that breathes sufficient life and meaning into the preamble so as to limit it to a particular practical application rather than being so broad and sweeping as to cover every substantial practical application of the idea embodied therein. Finally, the specification clearly discloses in page 24 that the machine-readable media can be definited non-tangible medium as signal-bearing media as a whole which is clearly and definitely non-statutory.

The applicant also argues in pages 10-12 for claims rejected under 35 U.S.C. 102(b) that nowhere the cited reference discloses the claimed language as "automatically setting an optimal machine state on said computer for said processing by selecting an optimal matrix subroutine form among a plurality of matix subroutines stored in a memory that could alternatively perform a level 3 matrix multiplication processing".
The examiner respectfully submits that no all the detail of argument cited in pages 10-12 are existed in the current claim language. Technically, the independent claims require only a selection of a subroutine from a plurality of subroutine and this requirement/limitation is either inherently or expressively disclosed by the cited reference by co-inventor Gustavson as clearly addressed in the previous Office action. The cited portion of reference, section 3 in pages 208-209 and section 3.2 in pages 210-211 discloses an optimal subroutine DGEMM out of a plurality of subroutines DSYMM, DSYRK, DSYR2K, DTRMM, DTRSM... for performing level 3 matrix multiplication processing. Further, it is inherently to select an optimal element (given criteria or requirement) from a set of elements.

The applicant further argues in pages 12-13 for claims rejected under double patenting that there is a differences between applications wherein '934 relates to a specific technique of streaming of data, not to the selection of an optimal subroutine.
The examiner respectfully submits that the claims 21-22 of co-pending application 10/671,934 disclose narrower version of the current application wherein the current application requires a selection of one subroutine (e.g. obviously a selected subroutine is the optimal in some perspective) out of a plurality of subroutines and the co-pending application also discloses a selection of a set of subroutine (e.g. two subroutines is narrower or more limit than one subroutine) from a plurality of subroutines. Other features of the co-pending applicant would make it narrower or more limits than the current application, including streaming and switch back and forth between the caches. Thus, the double patent rejection is properly maintained.